

SECOND REGULAR SESSION  
[TRULY AGREED TO AND FINALLY PASSED]  
HOUSE COMMITTEE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NO. 922

89TH GENERAL ASSEMBLY

1998

L3884.03T

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## AN ACT

To repeal sections 288.126, 288.150 and 288.290, RSMo 1994, and sections 288.034, 288.090, 288.130, 288.160 and 288.380, RSMo Supp. 1997, relating to employment security, and to enact in lieu thereof eight new sections relating to the same subject, with penalty provisions and an effective date.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 288.126, 288.150 and 288.290, RSMo 1994, and sections 288.034, 288.090, 288.130, 288.160 and 288.380, RSMo Supp. 1997, are repealed and eight new sections enacted in lieu thereof, to be known as sections 288.034, 288.090, 288.126, 288.130, 288.150, 288.160, 288.290 and 288.380, to read as follows:

288.034. 1. "Employment" means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied, and notwithstanding any other provisions of this section, service with respect to which a tax is required to be paid under any federal unemployment tax law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which, as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required to be covered under this law.

2. The term "employment" shall include an individual's entire service, performed within or both within and without this state if:

- (1) The service is localized in this state; or
- (2) The service is not localized in any state but some of the service is performed in this

**EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

state and the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state.

3. Service performed by an individual for wages shall be deemed to be employment subject to this law:

(1) If covered by an election filed and approved pursuant to subdivision (2) of subsection 3 of section 288.080;

(2) If covered by an arrangement pursuant to section 288.340 between the division and the agency charged with the administration of any other state or federal unemployment insurance law, pursuant to which all services performed by an individual for an employing unit are deemed to be performed entirely within this state.

4. Service shall be deemed to be localized within a state if the service is performed entirely within such state; or the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state; for example, is temporary or transitory in nature or consists of isolated transactions.

5. Service performed by an individual for remuneration shall be deemed to be employment subject to this law unless it is shown to the satisfaction of the division that such services were performed by an independent contractor. In determining the existence of the independent contractor relationship, the common law of agency right to control shall be applied. The common law of agency right to control test shall include but not be limited to: If the alleged employer retains the right to control the manner and means by which the results are to be accomplished, the individual who performs the service is an employee. If only the results are controlled, the individual performing the service is an independent contractor.

6. The term "employment" shall include service performed for wages as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for his **or her** principal; or as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his **or her** principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations, provided:

(1) The contract of service contemplates that substantially all of the services are to be performed personally by such individual; and

(2) The individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation); and

(3) The services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

7. Service performed by an individual in the employ of this state or any political subdivision thereof or any instrumentality of any one or more of the foregoing which is wholly owned by this state and one or more other states or political subdivisions, or any service performed in the employ of any instrumentality of this state or of any political subdivision thereof, and one or more other states or political subdivisions, provided that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act and is not excluded from "employment" [under] **pursuant to** subsection 9 of this section, shall be "employment" subject to this law.

8. Service performed by an individual in the employ of a corporation or any community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, or other organization described in section 501(c)(3) of the Internal Revenue Code which is exempt from income tax under section 501(a) of that code if the organization had four or more individuals in employment for some portion of a day in each of twenty different weeks whether or not such weeks were consecutive within a calendar year regardless of whether they were employed at the same moment of time shall be "employment" subject to this law.

9. For the purposes of subsections 7 and 8 of this section, the term "employment" does not apply to service performed:

(1) In the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or

(2) By a duly ordained, commissioned, or licensed minister of a church in the exercise of [his] **such minister's** ministry or by a member of a religious order in the exercise of duties required by such order; or

(3) In the employ of a governmental entity referred to in subdivision (3) of subsection 1 of section 288.032 if such service is performed by an individual in the exercise of duties:

(a) As an elected official;

(b) As a member of a legislative body, or a member of the judiciary, of a state or political subdivision;

(c) As a member of the state national guard or air national guard;

(d) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;

(e) In a position which, under or pursuant to the laws of this state, is designated as (i) a

major nontenured policymaking or advisory position, or (ii) a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week; or

(4) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work; or

(5) As part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or

(6) By an inmate of a custodial or penal institution; or

(7) In the employ of a school, college, or university, if such service is performed (i) by a student who is enrolled and is regularly attending classes at such school, college, or university, or (ii) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that (I) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and (II) such employment will not be covered by any program of unemployment insurance.

10. The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States (except in Canada), if:

(1) The employer's principal place of business in the United States is located in this state;

or

(2) The employer has no place of business in the United States, but:

(a) The employer is an individual who is a resident of this state; or

(b) The employer is a corporation which is organized under the laws of this state; or

(c) The employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(3) None of the criteria of subdivisions (1) and (2) of this subsection is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state;

(4) As used in this subsection and in subsection 11 of this section, the term "United States" includes the states, the District of Columbia and the Commonwealth of Puerto Rico.

11. An "American employer", for the purposes of subsection 10 of this section, means a person who is:

- (1) An individual who is a resident of the United States; or
- (2) A partnership, if two-thirds or more of the partners are residents of the United States;

or

- (3) A trust, if all of the trustees are residents of the United States; or
- (4) A corporation organized under the laws of the United States or of any state.

12. The term "employment" shall not include:

- (1) Service performed by an individual in agricultural labor;

(a) For the purposes of this subdivision, the term "agricultural labor" means remunerated service performed:

a. On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife;

b. In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

c. In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Federal Agricultural Marketing Act, as amended (46 Stat. 1550, Sec. 3; 12 U.S.C. 1441j), or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

d. i. In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed;

ii. In the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of services described in item i of this subparagraph, but only if such operators produced more than one-half of the commodity with respect to which such service is performed;

iii. The provisions of items i and ii of this subparagraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

e. On a farm operated for profit if such service is not in the course of the employer's trade

or business. As used in this paragraph, the term "farm" includes stock, dairy, poultry, fruit, furbearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures, used primarily for the raising of agricultural or horticultural commodities, and orchards;

(b) The term "employment" shall include service performed after December 31, 1977, by an individual in agricultural labor as defined in paragraph (a) of this subdivision when such service is performed for a person who, during any calendar quarter, paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor or for some portion of a day in a calendar year in each of twenty different calendar weeks, whether or not such weeks were consecutive, employed in agricultural labor ten or more individuals, regardless of whether they were employed at the same moment of time;

(c) For the purposes of this subsection any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be considered as employed by such crew leader:

a. If such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963; or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment, which is provided by such crew leader; and

b. If such individual is not in employment by such other person;

c. If any individual is furnished by a crew leader to perform service in agricultural labor for any other person and that individual is not in the employment of the crew leader:

i. Such other person and not the crew leader shall be treated as the employer of such individual; and

ii. Such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his **or her** own behalf or on behalf of such other person) for the service in agricultural labor performed for such other person;

d. For the purposes of this subsection, the term "crew leader" means an individual who:

i. Furnishes individuals to perform service in agricultural labor for any other person;

ii. Pays (either on his **or her** own behalf or on behalf of such other person) the individuals so furnished by him **or her** for the service in agricultural labor performed by them; and

iii. Has not entered into a written agreement with such other person under which such individual is designated as in employment by such other person;

(2) Domestic service in a private home except as provided in subsection 13 of this section;

(3) Service performed by an individual **under the age of eighteen years** in the delivery or distribution of newspapers or shopping news[, including] **but shall not include** delivery or distribution to any point for subsequent delivery or distribution;

**(4) Service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by him or her at a fixed price, his or her compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him or her, whether or not he or she is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;**

**(5)** Service performed by an individual in the employ of his **or her** son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his **or her** father or mother;

**[(5)] (6)** Except as otherwise provided in this law, service performed in the employ of a corporation, community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

**[(6)] (7)** Services with respect to which unemployment insurance is payable under an unemployment insurance system established by an act of Congress;

**[(7)] (8)** Service performed in the employ of a foreign government;

**[(8)] (9)** Service performed in the employ of an instrumentality wholly owned by a foreign government:

(a) If the service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and

(b) If the division finds that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof. The certification of the United States Secretary of State to the United States Secretary of Treasury shall constitute prima facie evidence of such equivalent exemption;

**[(9)] (10)** Service covered by an arrangement between the division and the agency charged with the administration of any other state or federal unemployment insurance law pursuant to which all services performed by an individual for an employing unit during the period covered by the employing unit's approved election are deemed to be performed entirely within the jurisdiction of such other state or federal agency;

**[(10)] (11)** Service performed in any calendar quarter in the employ of a school, college or university not otherwise excluded, if such service is performed by a student who is enrolled and regularly attending classes at such school, college, or university, and the remuneration for such service does not exceed fifty dollars (exclusive of board, room, and tuition);

**[(11)] (12)** Service performed by an individual for a person as a licensed insurance agent,

a licensed insurance broker, or an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commissions;

[(12)] **(13)** Domestic service performed in the employ of a local college club or of a local chapter of a college fraternity or sorority, except as provided in subsection 13 of this section;

[(13)] **(14)** Services performed after March 31, 1982, in programs authorized and funded by the Comprehensive Employment and Training Act by participants of such programs, except those programs with respect to which unemployment insurance coverage is required by the Comprehensive Employment and Training Act or regulations issued pursuant thereto;

[(14)] **(15)** Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer; except, that this subdivision shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

[(15)] **(16)** Services performed by a licensed real estate salesperson or licensed real estate broker if at least eighty percent of the remuneration, whether or not paid in cash, for the services performed rather than to the number of hours worked is directly related to sales performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for federal tax purposes;

[(16)] **(17)** Services performed as a direct seller who is engaged in the trade or business of the delivering or distribution of newspapers or shopping news, including any services directly related to such trade or business, or services performed as a direct seller who is engaged in the trade or business of selling, or soliciting the sale of, consumer products in the home or otherwise than in, or affiliated with, a permanent, fixed retail establishment, if eighty percent or more of the remuneration, whether or not paid in cash, for the services performed rather than the number of hours worked is directly related to sales performed pursuant to a written contract between such direct seller and the person for whom the services are performed, and such contract provides that the individual will not be treated as an employee with respect to such services for federal tax purposes;

[(17)] **(18)** Services performed as a volunteer research subject who is paid on a per study basis for scientific, medical or drug-related testing for any organization other than one described in section 501(c)(3) of the Internal Revenue Code or any governmental entity.

13. The term "employment" shall include domestic service as defined in subdivisions (2) and (12) of subsection 12 of this section performed after December 31, 1977, if the employing unit

for which such service is performed paid cash wages of one thousand dollars or more for such services in any calendar quarter after December 31, 1977.

14. The term "employment" shall include or exclude the entire service of an individual for an employing unit during a pay period in which [his] **such individual's** services are not all excluded under the foregoing provisions, on the following basis: If the services performed during one-half or more of any pay period constitute employment as otherwise defined in this law, all the services performed during such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period do not constitute employment as otherwise defined in this law, then none of the services for such period shall be deemed to be employment. (As used in this subsection, the term "pay period" means a period of not more than thirty-one consecutive days for which a payment of remuneration is ordinarily made to the individual by the employing unit employing [him] **such individual**.) This subsection shall not be applicable with respect to service performed in a pay period where any such service is excluded [under] **pursuant to** subdivision (7) of subsection 12 of this section.

15. The term "employment" shall not include the services of a full-time student who performed such services in the employ of an organized summer camp for less than thirteen calendar weeks in such calendar year.

16. For the purpose of subsection 15 of this section, an individual shall be treated as a full-time student for any period:

(1) During which the individual is enrolled as a full-time student at an educational institution; or

(2) Which is between academic years or terms if:

(a) The individual was enrolled as a full-time student at an educational institution for the immediately preceding academic year or term; and

(b) There is a reasonable assurance that the individual will be so enrolled for the immediately succeeding academic year or term after the period described in paragraph (a) of this subdivision.

17. For the purpose of subsection 15 of this section, an organized summer camp shall mean a summer camp which:

(1) Did not operate for more than seven months in the calendar year and did not operate for more than seven months in the preceding calendar year; or

(2) Had average gross receipts for any six months in the preceding calendar year which were not more than thirty-three and one-third percent of its average gross receipts for the other six months in the preceding calendar year.

18. The term "employment" shall not mean service performed by a remodeling salesperson acting as an independent contractor; however, if the federal Internal Revenue Service determines that a contractual relationship between a direct provider and an individual acting as an

independent contractor [under] **pursuant to** the provisions of this subsection is in fact an employer-employee relationship for the purposes of federal law, then that relationship shall be considered as an employer-employee relationship for the purposes of this chapter.

288.090. 1. Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this law. Such contributions shall become due and be paid by each employer to the division for the fund on or before the last day of the month following each calendar quarterly period of three months except when regulation requires monthly payment. Any employer upon application, or pursuant to a general or special regulation, may be granted an extension of time, not exceeding three months, for the making of his quarterly contribution and wage reports or for the payment of such contributions. Payment of contributions due shall be made to the treasurer designated pursuant to section 288.290.

(1) In the payment of any contributions due, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent;

(2) Contributions shall not be deducted in whole or in part from the wages of individuals in employment.

2. As of June thirtieth of each year, the division shall establish an average industry contribution rate for the next succeeding calendar year for each of the industrial classification divisions listed in the Standard Industrial Classification Manual furnished by the federal government. The average industry contribution rate for each standard industrial classification division shall be computed by multiplying total taxable wages paid by each employer in the industrial classification division during the twelve consecutive months ending on June thirtieth by the employer's contribution rate established for the next calendar year and dividing the aggregate product for all employers in the industrial classification division by the total of taxable wages paid by all employers in the industrial classification division during the twelve consecutive months ending on June thirtieth. Each employer will be assigned to a standard industrial classification code division as determined by the division in accordance with the definitions contained in the Standard Industrial Classification Manual, and shall pay contributions at the average industry rate established for the preceding calendar year for the industrial classification division to which it is assigned or two and seven-tenths percent of taxable wages paid by it, whichever is the greater, unless there have been at least twelve consecutive calendar months immediately preceding the calculation date throughout which its account could have been charged with benefits. The division shall classify all employers meeting this chargeability requirement for each calendar year in accordance with their actual experience in the payment of contributions on their own behalf and with respect to benefits charged against their accounts, with a view to fixing such contribution rates as will reflect such experience. The division shall determine the contribution rate of each such employer in accordance with sections 288.113 to 288.126. Notwithstanding the provisions of this subsection, any employing unit which becomes an employer

pursuant to the provisions of subsection 7 or 8 of section 288.034 shall pay contributions equal to one percent of wages paid by it until its account has been chargeable with benefits for the period of time sufficient to enable it to qualify for a computed rate on the same basis as other employers.

3. Benefits paid to employees of any governmental entity and nonprofit organizations shall be financed in accordance with the provisions of this subsection. For the purpose of this subsection, a "nonprofit organization" is an organization (or group of organizations) described in section 501(c)(3) of the United States Internal Revenue Code which is exempt from income tax under section 501(a) of such code.

(1) A governmental entity which, pursuant to subsection 7 of section 288.034, or nonprofit organization which, pursuant to subsection 8 of section 288.034, is, or becomes, subject to this law on or after April 27, 1972, shall pay contributions due under the provisions of subsections 1 and 2 of this section unless it elects, in accordance with this subdivision, to pay to the division for the unemployment compensation fund an amount equal to the amount of regular benefits and of one-half of the extended benefits paid, that is attributable to service in the employ of such governmental entity or nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of such election; except that, with respect to benefits paid for weeks of unemployment beginning on or after January 1, 1979, any such election by a governmental entity shall be to pay to the division for the unemployment compensation fund an amount equal to the amount of all regular benefits and all extended benefits paid that is attributable to service in the employ of such governmental entity.

(a) A governmental entity or nonprofit organization which is, or becomes, subject to this law on or after April 27, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than one calendar year, provided it files with the division a written notice of its election within the thirty-day period immediately following the date of the determination of such subjectivity. The provisions of paragraphs (a) through (e) of subdivision (4) of subsection 1 of section 288.100 shall not apply in the calendar year 1998 and each calendar year thereafter, in the case of an employer who has elected to become liable for payments in lieu of contributions.

(b) A governmental entity or nonprofit organization which makes an election in accordance with paragraph (a) of this subdivision will continue to be liable for payments in lieu of contributions until it files with the division a written notice terminating its election not later than thirty days prior to the beginning of the calendar year for which such termination shall first be effective.

(c) A governmental entity or any nonprofit organization which has been paying contributions under this law for a period subsequent to January 1, 1972, may change to a reimbursable basis by filing with the division not later than thirty days prior to the beginning of any calendar year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next

calendar year.

(d) The division, in accordance with such regulations as may be adopted, shall notify each governmental entity or nonprofit organization of any determination of its status of an employer and of the effective date of any election which it makes and of any termination of such election. Such determination shall be subject to appeal as is provided in subsection [3] 4 of section 288.130.

(2) Payments in lieu of contributions shall be made in accordance with the provisions of paragraph (a) of this subdivision, as follows:

(a) At the end of each calendar quarter, or at the end of any other period as determined by the director, the division shall bill the governmental entity or nonprofit organization (or group of such organizations) which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such organization; except that, with respect to extended benefits paid for weeks of unemployment beginning on or after January 1, 1979, which are attributable to service in the employ of a governmental entity, the governmental entity shall be billed for the full amount of such extended benefits.

(b) Payment of any bill rendered under paragraph (a) of this subdivision shall be due and shall be made not later than thirty days after bill was mailed to the last known address of the governmental entity or nonprofit organization or was otherwise delivered to it.

(c) Payments made by the governmental entity or nonprofit organization under the provisions of this subsection shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(d) Past due payments of amounts in lieu of contributions shall be subject to the same interest and penalties that apply to past due contributions. Also, unpaid amounts in lieu of contributions, interest, penalties and surcharges are subject to the same assessment, civil action and compromise provisions of this law as apply to unpaid contributions. Further, the provisions of this law which provide for the adjustment or refund of contributions shall apply to the adjustment or refund of payments in lieu of contributions.

(3) If any governmental entity or nonprofit organization fails to timely file a required quarterly wage [reports or is delinquent in making payments in lieu of contributions, interest, penalties and surcharges as required under this chapter, the division may terminate such organization's election to make payments in lieu of contributions as of the beginning of the next calendar year, and such termination shall be effective for that and the next calendar year] **report, the division shall assess such entity or organization a penalty as provided in subsections 1 and 2 of section 288.160.**

(4) Except as provided in subsection 4 of this section, each employer that is liable for

payments in lieu of contributions shall pay to the division for the fund the amount of regular benefits plus the amount of one-half of extended benefits paid that are attributable to service in the employ of such employer; except that, with respect to benefits paid for weeks of unemployment beginning on or after January 1, 1979, a governmental entity that is liable for payments in lieu of contributions shall pay to the division for the fund the amount of all regular benefits and all extended benefits paid that are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one employer in the base period of the claim, the amount chargeable to each employer shall be obtained by multiplying the benefits paid by a ratio obtained by dividing the base period wages from such employer by the total wages appearing in the base period.

(5) Two or more employers that have become liable for payments in lieu of contributions, in accordance with the provisions of subdivision (1) of this subsection, may file a joint application to the division for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. Each such application shall identify and authorize a group representative to act as the group's agent for the purposes of this subdivision. Upon approval of the application, the division shall establish a group account for such employers effective as of the beginning of the calendar quarter in which the application was received and shall notify the group's representative of the effective date of the account. Such account shall remain in effect for not less than two years and thereafter until terminated at the discretion of the director or upon application by the group. Upon establishment of the account, each member of the group shall be liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in such quarter that are attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by such member in such quarter bears to the total wages paid during such quarter for service performed in the employ of all members of the group. The director shall prescribe such regulations as he deems necessary with respect to applications for establishment, maintenance and termination of group accounts that are authorized by this subdivision, for addition of new members to, and withdrawal of active members from, such accounts, and for the determination of the amounts that are payable under this subdivision by members of the group and the time and manner of such payments.

4. Any employer which elects to make payments in lieu of contributions into the unemployment compensation fund as provided in subdivision (1) of subsection 3 of this section shall not be liable to make such payments with respect to the benefits paid to any individual whose base period wages include wages for previous work not classified as insured work as defined in section 288.030 to the extent that the unemployment compensation fund is reimbursed for such benefits pursuant to section 121 of Public Law 94-566.

5. Any employer which elects to make payments in lieu of contributions pursuant to

subsection 3 of this section shall be liable for an additional surcharge to the division for the unemployment compensation trust fund in an amount equal to the interest rate on United States treasury bills, averaged for the previous four calendar quarters, multiplied by the total benefit payments charged to the employer's account. Governmental entities except cities, counties and the state of Missouri which elect to make payments in lieu of contributions pursuant to subsection 3 of this section shall be liable for an additional surcharge to the division for the unemployment compensation fund in an amount equal to one-half of the interest rate on United States treasury bills, averaged for the previous four calendar quarters, multiplied by the total benefit payments charged to the employer's account. The cumulative benefits charged plus the cumulative surcharges pursuant to this subsection for all employers electing to make payments in lieu of contributions shall not exceed the summation of total benefit payments chargeable and not chargeable for the calendar quarter. The provisions of this subsection shall not be effective after September 30, 1993.

6. Beginning October 1, 1993, through December 31, 1993, any employer which elects to make payments in lieu of contributions pursuant to subsection 3 of this section shall be liable for an additional surcharge to the division for the unemployment compensation trust fund in an amount equal to the interest rate of United States treasury bills, averaged for the previous four calendar quarters, multiplied by the total benefit payments charged to the employer's account. The cumulative benefits charged plus the cumulative surcharges pursuant to this subsection for all employers electing to make payments in lieu of contributions shall not exceed the summation of total benefit payments chargeable and not chargeable for the calendar quarter.

7. Beginning January 1, 1994, through December 31, 1995, any employer which elects to make payments in lieu of contributions pursuant to subsection 3 of this section shall be liable for an additional surcharge to the division for the unemployment compensation trust fund. The calendar year surcharge rate will be the base prime rate on corporate loans posted by at least seventy-five percent of the nation's thirty largest banks as of November thirtieth of the preceding year. The additional surcharge will be the surcharge rate multiplied by the total benefit payments charged to the employer's account. The cumulative benefits charged plus the cumulative surcharges pursuant to this subsection for all employers electing to make payments in lieu of contributions shall not exceed the summation of total benefit payments chargeable and not chargeable for the calendar quarter.

8. Beginning January 1, 1996, through December 31, 1996, any employer which elects to make payments in lieu of contributions pursuant to subsection 3 of this section shall be liable for the total benefit payments chargeable to its account pursuant to the provisions of section 288.100 plus one-third of the total benefit payments not charged to its account pursuant to paragraphs (a) through (e) of subdivision (4) of subsection 1 of section 288.100. The remaining two-thirds of the benefit payments not charged to its account pursuant to paragraphs (a) through (e) of subdivision

(4) of subsection 1 of section 288.100 shall be paid by the unemployment compensation trust fund.

9. Beginning January 1, 1997, through December 31, 1997, any employer which elects to make payments in lieu of contributions pursuant to subsection 3 of this section shall be liable for the total benefit payments chargeable to its account pursuant to the provisions of section 288.100 plus two-thirds of the total benefit payments not charged to its account pursuant to paragraphs (a) through (e) of subdivision (4) of subsection 1 of section 288.100. The remaining one-third of the benefit payments not charged to its account pursuant to paragraphs (a) through (e) of subdivision (4) of subsection 1 of section 288.100 shall be paid by the unemployment compensation trust fund.

10. Beginning January 1, 1998, and each calendar year thereafter, any employer which elects to make payments in lieu of contributions pursuant to subsection 3 of this section shall be liable for all benefit payments and shall not have charges relieved pursuant to the provisions of paragraphs (a) through (e) of subdivision (4) of subsection 1 of section 288.100.

11. (1) For the purposes of this chapter, a common paymaster arrangement will not exist unless approval has been obtained from the division. To receive a division-approved common paymaster arrangement, the related corporation designated to be the common paymaster for the related corporations must notify the division in writing at least thirty days prior to the beginning of the quarter in which the common paymaster reporting is to be effective. The common paymaster shall furnish the name and account number of each corporation in the related group that will be utilizing the one corporation as the common paymaster. The common paymaster shall also notify the division at least thirty days prior to any change in the related group of corporations or termination of the common paymaster arrangement. The common paymaster shall be responsible for keeping books and records for the payroll with respect to its own employees and the concurrently employed individuals of the related corporations. In order for remuneration to be eligible for the provisions applicable to a common paymaster, the individuals must be concurrently employed and the remuneration must be disbursed through the common paymaster. The common paymaster shall have the primary responsibility for remitting all required quarterly contribution and wage reports, contributions due with respect to the remuneration it disburses as the common paymaster and/or payments in lieu of contributions. The common paymaster shall compute the contributions due as though it were the sole employer of the concurrently employed individuals. If the common paymaster fails to remit the quarterly contribution and wage reports, contributions due and/or payments in lieu of contributions, in whole or in part, it shall remain liable for submitting the quarterly contribution and wage reports and the full amount of the unpaid portion of the contributions due and/or payments in lieu of contributions. In addition, each of the related corporations using the common paymaster shall be jointly and severally liable for submitting quarterly contribution and wage reports, its share of the contributions due and/or payments in lieu of contributions, penalties, interest and surcharges which are not submitted and/or paid by the common paymaster. All contributions due, payments

in lieu of contributions, penalties, interest and surcharges which are not timely paid to the division under a common paymaster arrangement shall be subject to the collection provisions of this chapter.

(2) For the purposes of this subsection, "concurrent employment" means the simultaneous existence of an employment relationship between an individual and two or more related corporations for any calendar quarter in which employees are compensated through a common paymaster which is one of the related corporations, those corporations shall be considered one employing unit and be subject to the provisions of this chapter.

(3) For the purposes of this subsection, "related corporations" means that corporations shall be considered related corporations for an entire calendar quarter if they satisfy any one of the following tests at any time during the calendar quarter:

(a) The corporations are members of a "controlled group of corporations". The term "controlled group of corporations" means:

a. Two or more corporations connected through stock ownership with a common parent corporation, if the parent corporation owns stock possessing at least fifty percent of the total combined voting power of all classes of stock entitled to vote or at least fifty percent of the total value of shares of all classes of stock of each of the other corporations; or

b. Two or more corporations, if five or less persons who are individuals, estates or trusts own stock possessing at least fifty percent of the total combined voting power of all classes of stock entitled to vote or at least fifty percent of the total value of shares of all classes of stock of each of the other corporations; or

(b) In the case of corporations which do not issue stock, at least fifty percent of the members of one corporation's board of directors are members of the board of directors of the other corporations; or

(c) At least fifty percent of one corporation's officers are concurrently officers of the other corporations; or

(d) At least thirty percent of one corporation's employees are concurrently employees of the other corporations.

288.126. [1. An employer shall be assigned a contribution rate which shall be the greater of five and four-tenths percent or the employer's calculated contribution rate for any calendar year if, when the contribution rates for that year are calculated, the employer has not filed all required reports for all periods included in the calculation of the rates. If, however, the required reports and information are filed with the division within thirty calendar days following the date the employer is notified of its contribution rate, that information will be used in a determination of the employer's contribution rate as provided in this chapter.

2.] If an employer is not eligible for a rate calculation after once becoming eligible because the employer did not have twelve consecutive calendar months immediately preceding the

calculation date throughout which its account could have been charged with benefits, his rate shall be no less than five and four-tenths percent.

288.130. 1. Each employing unit shall keep true and accurate payroll and other related records, containing such information as the division may by regulation prescribe for a period of at least three calendar years after the record was made. Such records shall be open to inspection and be subject to being copied by authorized representatives of the division at any reasonable time and as often as may be necessary. Any authorized person engaged in administering this law may require from any employing unit any sworn or unsworn reports, with respect to individuals performing services for it, which are deemed necessary for the effective administration of this law.

**2. All employers required to report W-2 copy A information on magnetic media tape to the Social Security Administration pursuant to 26 CFR Section 301.6011-2, or successor regulations, are likewise required to report quarterly wage information due pursuant to section 288.090 to the division on magnetic tape or diskette in a format prescribed by the division.**

3. Each employer shall post and maintain in places readily accessible to the employer's workers printed statements concerning benefit rights, claims for benefits and such other matters related to the administration of this law as the division may by regulation prescribe. Each employer shall supply to workers copies of any printed statements relating to claims for benefits when and as the division may by regulation prescribe. Such printed statements and other materials shall be supplied by the division without cost.

[3.] 4. A deputy shall make an ex parte determination after investigation but without hearing with respect to any matter pertaining to the liability of an employing unit which does not involve a claimant. The deputy shall promptly notify any interested employing units of each such determination and the reason for it. The division shall grant a hearing before an appeals tribunal to any employing unit appealing from any such ex parte determination provided an appeal is filed in writing within thirty days following the date of notification or the mailing of such determination to the party's last known address. In the absence of an appeal any such determination shall become final at the expiration of a thirty-day period. The deputy may, however, at any time within a year from the date of the deputy's determination, for good cause, reconsider the determination and shall promptly notify all interested employing units of his amended determination and the reason for it.

[4.] 5. The thirty-day period provided in subsection [3] 4 of this section may, for good cause, be extended.

288.150. Contributions unpaid for any quarter which become due and payable after the last day of the calendar quarter in which this act becomes effective (August 28, 1994) shall bear interest at the rate established by the Internal Revenue Code pursuant to title 26, section 6621(b), in effect on the date on which such contribution became due, provided, however, that such interest

shall abate for any period of any extension of time granted by the division pursuant to the provisions of section 288.090. Such interest shall accrue for each month, or part of a month, after such date until payment is received by the division, except that:

(1) An employing unit not previously subject to this law, which becomes an employer and does not refuse to make the reports required under this law shall not be liable for such interest until **[fifteen] thirty** days after it has been notified that the division has made a determination that it is an employer subject to this law; or

(2) An employing unit previously subject to this law, which acquires substantially all of the business of an employer under section 288.110 and whose contribution rate increases after the accounts were combined and does not refuse to make the reports required under this law shall not be liable for such interest until **[fifteen] thirty** days after it has been notified that the division has made a determination that it is a successor employer under this chapter.

288.160. 1. If any employer neglects or refuses to make a report [and payment of contributions] as required by this law the division shall make an estimate based on any information in its possession or that may come into its possession of the amount of wages paid by such employer for the period in respect to which the employer failed to make report [and payment], and upon the basis of such estimated amount compute and assess the contributions and interest payable by such employer, adding to such sum a penalty [equal to ten percent thereof] **as set forth in subsection 2 of this section**. Promptly thereafter, the division shall give to such employer written notice of such estimated contributions, interest and penalties as so assessed, the notice to be served personally or by registered mail, directed to the last known principal place of business of such employer in this state or in any state in the event the employer has none in this state.

**2. If any employer neglects or refuses to file any required report by the last day of the month following the due date there shall be imposed a penalty, equal to the greater of one hundred dollars or ten percent of the contributions required to be shown on the report, for each month or fraction thereof during which such failure continues, provided, however, that the penalty shall not exceed the greater of two hundred dollars or twenty percent of the contributions in the aggregate.**

**3.** In any case in which any contributions, interest or penalties imposed by this law are not paid when due, it shall be the duty of the division, when the amount of contributions, interest or penalties is determined, either by the report of the employer or by such investigation as the division may make, to assess the contributions, interest and penalties so determined against such employer and to certify the amount of such contributions, interest and penalties and give such employer written notice, served personally or by registered mail, directed to the last known address of such employer in this state or in any state, in the event the employer has none in this state.

[3.] **4.** If fraud or evasion on the part of any employer is discovered by the division, the division shall determine the amount by which the state has been defrauded, shall add to the amount so determined a penalty equal to twenty-five percent thereof, and shall assess the same against the employer. The amount so assessed shall be immediately due and payable; provided, however, that the division shall promptly thereafter give to such employer written notice of such assessment.

[4.] **5.** Any employer against whom an assessment is made pursuant to the provisions of subsections 1, 2 [and], 3 [above] **and 4 of this section** may petition for reassessment. The petition for such reassessment shall be filed with the division during the thirty-day period following the day of service or mailing of the notice of such assessment. In the absence of the filing of such a petition for reassessment the assessment shall become final upon the expiration of such a thirty-day period. Each such petition for reassessment shall set forth specifically and in detail the grounds upon which it is claimed the assessment is erroneous.

[5.] **6.** (1) In any case in which any contributions, interest or penalties imposed by law are not paid when due, the notice of the assessment of such contributions, interest and penalties shall be served upon or mailed to the employer within three years of the date upon which the payment of the contributions was due except that in any case of fraud or misrepresentation on the part of the employer, the notice of the assessment of the contributions, interest and penalties may be served upon or mailed to the employer at any time.

(2) The giving of the notice of the making of the assessment shall toll any statute of limitations on the collection of any contributions, interest and penalties assessed.

(3) In the event any employer is entitled to the advantage of the soldiers' and sailors' civil relief act of 1940, or any amendment thereto, prior to the date any assessment becomes final, such employer shall be permitted to file a petition for reassessment at any time within ninety days following such employer's discharge from the armed services.

(4) The certificate of assessment which, pursuant to the provisions of section 288.170, may be filed with the clerk of the circuit court shall, upon such filing, thereafter be treated in all respects as a final judgment of the circuit court against the employer and the general statute of limitations applying to other judgments of courts of record shall apply.

288.290. 1. There is hereby established as a special fund, separate and apart from all public moneys or funds of this state, an "Unemployment Compensation Fund", which shall be administered by the division exclusively for the purposes of this law. This fund shall consist of:

- (1) All contributions and payments in lieu of contributions collected under this law;
- (2) Interest earned upon any moneys in the fund;
- (3) Any property or securities acquired through the use of moneys belonging to the fund;
- (4) All earnings of such property or securities;
- (5) All voluntary contributions permitted under the law; and

(6) All funds set aside or appropriated by the Congress of the United States or any federal agency, to be deposited to the fund. All moneys in the funds shall be mingled and undivided, except that all money credited to this state's account in the unemployment trust fund pursuant to section 903 of the Social Security Act, as amended, and which has been appropriated for expenses of administration, shall be used only for the purposes set out in subsection 5 of this section and shall not be included in the cash balance in the unemployment compensation fund for the purposes of sections 288.100 and 288.113 to 288.126.

2. The director shall designate a treasurer and custodian of the fund and he shall administer the fund and shall issue his warrants upon it in accordance with such regulations as the director shall prescribe. He shall maintain within the fund three separate accounts:

- (1) A clearing account;
- (2) An unemployment trust fund account; and
- (3) A benefit account.

3. All moneys payable to the fund, upon their receipt by the division, shall immediately be deposited in the clearing account. Refunds of contributions or payments made necessary under the provisions of sections 288.140 and 288.340 may be paid from the clearing account or the benefit account. After clearance, all moneys in the clearing account shall be immediately deposited with the Secretary of the Treasury of the United States of America to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act, as amended, any provisions of law in this state relating to the deposit, administration, release, or disbursement of state moneys in the possession or custody of the state treasurer to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned from the Missouri account in the federal Unemployment Trust Fund. Except as otherwise provided, moneys in the clearing and benefit accounts may be deposited in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. Moneys in the clearing and benefit accounts shall not be commingled with other state funds but shall be maintained in separate accounts on the books of the depository bank. All funds required by this law to be deposited in any state depository shall be secured by such depository to the same extent and in the same manner as is or may hereafter be required by section 30.270, RSMo, and all the amendments thereto; provided, that the division shall do those acts directed to be done by the governor, attorney general and state treasurer, or any of them, under section 30.270, RSMo, which are not inconsistent with the other provisions of this law. Collateral pledged for this purpose shall be kept separate and distinct from any collateral pledged to secure other funds of the state, or, if combined, shall be first used to satisfy and make whole the accounts herein established. The treasurer shall give a separate bond conditioned upon the faithful performance of his duties as custodian of the fund in an amount not to exceed twenty-five thousand dollars and in the form prescribed by law or

approved by the attorney general. Premiums for such bonds shall be paid from the administration fund. All sums recovered for losses sustained by the fund shall be deposited therein.

4. Moneys shall be requisitioned from the Missouri account in the federal Unemployment Trust Fund solely for the payment of benefits or for refunds of contributions or payments in lieu of contributions in accordance with regulations prescribed by the director, except that money credited to this state's account pursuant to section 903 of the Social Security Act, as amended, shall be used exclusively as provided in subsection 5 of this section. The director shall from time to time requisition from the federal Unemployment Trust Fund such amounts, not exceeding the amounts standing to the Missouri account therein, as he deems necessary for the payment of benefits and refunds for a reasonable future period. Upon its receipt the treasurer shall deposit such money in the benefit account and shall issue his warrants for the payment of benefits solely from such benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of moneys belonging to this state in their custody. All warrants issued by the treasurer for the payment of benefits and refunds shall bear the signature of the treasurer and the countersignature of the director or other duly authorized division representative. Any balance of moneys requisitioned from the federal Unemployment Trust Fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the director, shall be redeposited with the Secretary of the Treasury of the United States of America to the credit of the Missouri account in the federal Unemployment Trust Fund as provided in subsection 3 of this section.

5. (1) Money credited to the account of this state in the Unemployment Trust Fund by the Secretary of the Treasury of the United States of America pursuant to section 903 of the Social Security Act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this law pursuant to a specific appropriation by the legislature, provided that the expenses are incurred and the money is requisitioned as needed after the enactment of an appropriation law which:

(a) Specifies the purpose for which such money is appropriated and the amounts appropriated therefor;

(b) Limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law; and

(c) Limits the amount which may be obligated during a twelve-month period beginning on July first and ending on the next June thirtieth to an amount which does not exceed the amount by which the aggregate of the amount transferred to the account of this state in the Unemployment Trust Fund pursuant to subsections (a) and (b) of section 903 of the Social Security

Act, as amended, exceeds the aggregate of the amounts used by this state pursuant to this subsection and charged against the amounts transferred to the account of this state in the Unemployment Trust Fund.

(2) The use of the money referred to in subdivision (1) of this subsection shall be accounted for in accordance with standards established by the Secretary of Labor.

(3) For purposes of subdivision (1) of this subsection, amounts used by this state for administration shall be chargeable against transferred amounts at the exact time the obligation is entered into.

(4) Money credited to the account of this state pursuant to section 903 of the Social Security Act, as amended, may not be withdrawn or used except for the payment of benefits and for the payment of expenses for the administration of this law and of public employment offices pursuant to this subsection.

(5) Money appropriated as provided under subdivision (1) of this subsection for the payment of expenses of administration shall be requisitioned as needed for the payment of obligations incurred under such appropriation and, upon requisition, shall be deposited in the unemployment compensation administration fund from which such payments shall be made. Money so deposited shall, until expended, remain a part of the unemployment compensation fund and, if it will not be expended, shall be returned promptly to the account of this state in the Unemployment Trust Fund.

**(6) Money credited to the account of the state in the federal Unemployment Trust Fund by the Secretary of the Treasury of the United States of America pursuant to Title 42, section 903 of the Social Security Act with respect to the federal fiscal years 1999, 2000 and 2001, shall be used solely for the administration of the unemployment compensation program.**

6. The provisions of subsections 1, 2, 3, 4, and 5 of this section, to the extent that they relate to the federal Unemployment Trust Fund, shall be operative only so long as such federal Unemployment Trust Fund continues to exist and so long as the Secretary of the Treasury of the United States of America continues to maintain a separate book account of all funds deposited therein by contributions from employers of this state for benefit purposes, and by money credited pursuant to section 903 of the Social Security Act, as amended, together with a proportionate share of the earnings apportioned to the Missouri account of such federal Unemployment Trust Fund, from which no other state is permitted to make or authorize withdrawals. If and when such Unemployment Trust Fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties, or securities therein belonging to the unemployment compensation fund of this state shall be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties or securities in a manner approved by the director in accordance with the provisions of this law; provided, that such

moneys shall be invested in the following readily marketable classes of securities: Bonds or other interest-bearing obligations of the United States of America, or securities on which the payment of principal and interest are guaranteed by the United States of America, and bonds or other interest-bearing obligations of the state of Missouri; and provided, further, that such investments shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The treasurer shall dispose of securities or other properties belonging to the unemployment compensation fund only under the direction of the director.

7. Notwithstanding any other provision of this law, any interest or penalties found to have been erroneously collected and which is ordered to be refunded shall, if paid into the unemployment compensation fund, be refunded out of the unemployment compensation fund and, if paid into the special employment security fund, shall be refunded out of the special employment security fund; except that, in the event any interest and penalties paid into the unemployment compensation fund shall be transferred to the special employment security fund, the refund of any such interest and penalties shall be made from the special employment security fund.

288.380. 1. Any agreement by a worker to waive, release, or commute such worker's rights to benefits or any other rights pursuant to this chapter, or pursuant to an employment security law of any other state or of the federal government shall be void. Any agreement by a worker to pay all or any portion of any contributions required shall be void. No employer shall directly or indirectly make any deduction from wages to finance the employer's contributions required from him or her, or accept any waiver of any right pursuant to this chapter by any individual in his or her employ.

2. No employing unit or any agent of an employing unit or any other person shall make a false statement or representation knowing it to be false, nor shall knowingly fail to disclose a material fact to prevent or reduce the payment of benefits to any individual, nor to avoid becoming or remaining an employer, nor to avoid or reduce any contribution or other payment required from any employing unit, nor shall willfully fail or refuse to make any contributions or payments nor to furnish any required reports nor to produce or permit the inspection or copying of required records. Each such requirement shall apply regardless of whether it is a requirement of this chapter, of an employment security law of any other state or of the federal government.

3. No person shall make a false statement or representation knowing it to be false or knowingly fail to disclose a material fact, to obtain or increase any benefit or other payment pursuant to this chapter, or under an employment security law of any other state or of the federal government either for himself or herself or for any other person.

4. No person shall without just cause fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in such person's power so to do in obedience to a subpoena of the director, the commission, an

appeals tribunal, or any duly authorized representative of any one of them.

5. No individual claiming benefits shall be charged fees of any kind in any proceeding pursuant to this chapter by the division, or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the division or a court may be represented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive for such services more than an amount approved by the division.

6. No employee of the division or any person who has obtained any list of applicants for work or of claimants for or recipients of benefits pursuant to this chapter shall use or permit the use of such lists for any political purpose.

7. Any person who shall willfully violate any provision of this chapter, or of an employment security law of any other state or of the federal government or any rule or regulation, the observance of which is required under the terms of any one of such laws, shall upon conviction be deemed guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment, and each such violation or each day such violation continues shall be deemed to be a separate offense.

8. In case of contumacy by, or refusal to obey a subpoena issued to, any person, any court of this state within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the director, the commission, an appeals tribunal, or any duly authorized representative of any one of them shall have jurisdiction to issue to such person an order requiring such person to appear before the director, the commission, an appeals tribunal or any duly authorized representative of any one of them, there to produce evidence if so ordered or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by the court as a contempt thereof.

9. An individual who willfully fails to disclose amounts earned during any week with respect to which benefits are claimed by him or her, willfully fails to disclose or has falsified as to any fact which would have disqualified him or her or rendered him or her ineligible for benefits during such week, or willfully fails to disclose a material fact or makes a false statement or representation in order to obtain or increase any benefit pursuant to this chapter, shall forfeit all of his or her benefit rights, and all of his or her wage credits accrued prior to the date of such failure to disclose or falsification shall be canceled, and any benefits which might otherwise have become payable to him or her subsequent to such date based upon such wage credits shall be forfeited; except that, the division may, upon good cause shown, modify such reduction of benefits and cancellation of wage credits. It shall be presumed that such failure or falsification was willful in any case in which an individual signs and certifies a claim for benefits and fails to disclose or falsifies as to any fact relative to such claim.

10. (1) Any assignment, pledge, or encumbrance of any rights to benefits which are or may become due or payable pursuant to this chapter shall be void; and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessities furnished to such individual or the individual's spouse or dependents during the time such individual was unemployed. Any waiver of any exemption provided for in this subsection shall be void; except that this section shall not apply to:

(a) Support obligations, as defined pursuant to paragraph (g) of subdivision (2) of this subsection, which are being enforced by a state or local support enforcement agency against any individual claiming unemployment compensation pursuant to this chapter; or

(b) Uncollected overissuances (as defined in section 13(c)(1) of the Food Stamp Act of 1977) of food stamp coupons;

(2) (a) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not the individual owes support obligations, as defined pursuant to paragraph (g) of this subdivision or owes uncollected overissuances of food stamp coupons (as defined in section 13(c)(1) of the Food Stamp Act of 1977). If any such individual discloses that he or she owes support obligations or uncollected overissuances of food stamp coupons, and is determined to be eligible for unemployment compensation, the division shall notify the state or local support enforcement agency enforcing the support obligation or the state food stamp agency to which the uncollected food stamp overissuance is owed that such individual has been determined to be eligible for unemployment compensation;

(b) The division shall deduct and withhold from any unemployment compensation payable to an individual who owes support obligations as defined pursuant to paragraph (g) of this subdivision or who owes uncollected food stamp overissuances:

a. The amount specified by the individual to the division to be deducted and withheld pursuant to this paragraph if neither subparagraph b. nor subparagraph c. of this paragraph is applicable; or

b. The amount, if any, determined pursuant to an agreement submitted to the division pursuant to section 454(20)(B)(i) of the Social Security Act by the state or local support enforcement agency, unless subparagraph c. of this paragraph is applicable; or the amount (if any) determined pursuant to an agreement submitted to the state food stamp agency pursuant to section 13(c)(3)(a) of the Food Stamp Act of 1977; or

c. Any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to properly served legal process, as that term is defined in section [462(e)] **459(i)** of the Social Security Act; or any amount otherwise required to be deducted and withheld from the unemployment compensation pursuant to section 13(c)(3)(b) of

the Food Stamp Act of 1977;

(c) Any amount deducted and withheld pursuant to paragraph (b) of this subdivision shall be paid by the division to the appropriate state or local support enforcement agency or state food stamp agency;

(d) Any amount deducted and withheld pursuant to paragraph (b) of this subdivision shall, for all purposes, be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the state or local support enforcement agency in satisfaction of the individual's support obligations or to the state food stamp agency to which the uncollected overissuance is owed as repayment of the individual's uncollected overissuance;

(e) For purposes of paragraphs (a), (b), (c), and (d) of this subdivision, the term "unemployment compensation" means any compensation payable pursuant to this chapter, including amounts payable by the division pursuant to an agreement pursuant to any federal law providing for compensation, assistance, or allowances with respect to unemployment;

(f) Deductions will be made pursuant to this section only if appropriate arrangements have been made for reimbursement by the state or local support enforcement agency, or the state food stamp agency, for the administrative costs incurred by the division pursuant to this section which are attributable to support obligations being enforced by the state or local support enforcement agency or which are attributable to uncollected overissuances of food stamp coupons;

(g) The term "support obligations" is defined for purposes of this subsection as including only obligations which are being enforced pursuant to a plan described in section 454 of the Social Security Act which has been approved by the Secretary of Health and Human Services pursuant to Part D of Title IV of the Social Security Act;

(h) The term "state or local support enforcement agency", as used in this subsection, means any agency of a state, or political subdivision thereof, operating pursuant to a plan described in paragraph (g) of this subdivision;

(i) The term "state food stamp agency" as used in this subsection, means any agency of a state, or political subdivision thereof, operating pursuant to a plan described in the Food Stamp Act of 1977;

(j) The director may prescribe the procedures to be followed and the form and contents of any documents required in carrying out the provisions of this subsection;

(k) The division shall comply with the following priority when deducting and withholding amounts from any unemployment compensation payable to an individual:

a. Before withholding any amount for child support obligations or uncollected overissuances of food stamp coupons, the division shall first deduct and withhold from any unemployment compensation payable to an individual the amount, as determined by the division, owed pursuant to subsection 11 or 12 of this section;

b. If, after deductions are made pursuant to subparagraph a. of paragraph (k) of this

subdivision, an individual has remaining unemployment compensation amounts due and owing, and the individual owes support obligations or uncollected overissuances of food stamp coupons, the division shall first deduct and withhold any remaining unemployment compensation amounts for application to child support obligations owed by the individual;

c. If, after deductions are made pursuant to subparagraphs a. and b. of paragraph (k) of this subdivision, an individual has remaining unemployment compensation amounts due and owing, and the individual owes uncollected overissuances of food stamp coupons, the division shall deduct and withhold any remaining unemployment compensation amounts for application to uncollected overissuances of food stamp coupons owed by the individual.

11. Any person who, by reason of the nondisclosure or misrepresentation by such person or by another of a material fact, has received any sum as benefits pursuant to this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in such person's case, or while he or she was disqualified from receiving benefits, shall, in the discretion of the division, either be liable to have such sums deducted from any future benefits payable to such person pursuant to this chapter or shall be liable to repay to the division for the unemployment compensation fund a sum equal to the amounts so received by him or her, and such sum shall be collectible in the manner provided in sections 288.160 and 288.170 for the collection of past due contributions.

12. Any person who, by reason of any error or omission or because of a lack of knowledge of material fact on the part of the division, has received any sum of benefits pursuant to this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in such person's case, or while such person was disqualified from receiving benefits, shall after an opportunity for a fair hearing pursuant to subsection 2 of section 288.190 have such sums deducted from any further benefits payable to such person pursuant to this chapter, provided that the division may elect not to process such possible overpayments where the amount of same is not over twenty percent of the maximum state weekly benefit amount in effect at the time the error or omission was discovered. Recovering overpaid unemployment compensation benefits which are a result of error or omission on the part of the claimant shall be pursued by the division through billing and setoffs against state income tax refunds.

13. Any person who has received any sum as benefits under the laws of another state, or under any unemployment benefit program of the United States administered by another state while any conditions for the receipt of benefits imposed by the law of such other state were not fulfilled in his or her case, shall after an opportunity for a fair hearing pursuant to subsection 2 of section 288.190 have such sums deducted from any further benefits payable to such person pursuant to this chapter, but only if there exists between this state and such other state a reciprocal agreement under which such entity agrees to recover benefit overpayments, in like fashion, on behalf of this state.

Section B. The repeal and reenactment of sections 288.034, 288.090, 288.126, 288.130, 288.150, 288.160, 288.290 and 288.380 of this act shall become effective on January 1, 1999.

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Unofficial

Bill

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